BAIL SLIP

CA.No.783/99

The Appellant/Accused was directed to be released on bail in and by the order of this Court dated 25.10.99 and made in Crl.M.P.8426/99 in CA.783 of 99 on the file of High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No.783 of 1999

Ramachandran ... Appellant./ Accused

Vs

State rep. by
Inspector of Police,
Thandarampattu Police Station,
Thani Padi P.S. ... Respondent/ Complainant

Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Thiruvannamalai, in S.C.No. 34 of 1997 dated : 26.7.1999.

For Appellant : Mr.R.Karthikeyan for M/s.V.Ayyadurai.

For Respondent : Mr.V.M.R.Rajendran, Addl. Public Prosecutor.

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

The sole accused, in a case of murder, on being found guilty by the Court of Sessions, Thiruvannamalai, in S.C.No.34 of 1997, has brought forth this appeal, challenging the said judgment.

2. The case of the prosecution is as follows:-

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i.P.Ws.1, 3 and 7 are the residents of Malamanjanur. P.W.4 belongs to Puliyampatti. P.W.2 was the Village Administrative Officer of Pudur Chekkadi village. The deceased was the second wife of the accused/appellant. The first marriage of the accused/appellant took place seven years prior to the occurrence and after one year, the first wife deserted the matrimonial home and went away. Thereafter, the accused/appellant married the deceased and was living with her. The deceased came to know that the accused/appellant has got illicit intimacy with one Thanjiammal and hence, she questioned the accused. The deceased also brought the said fact to the notice of the Panchayat President, P.W.3, due to which, there were quarrels between the accused and the deceased. The deceased also fell ill. One week prior to the date of occurrence, the wife of P.W.1, took the deceased to Udaiyarkuppam, where she was given native treatment by P.W.5.

ii. A day prior to the date of occurrence, i.e., on 26.2.1996, P.W.1 and the brother of the deceased came to Puliyampatti village on knowing about the ill-health of the deceased. P.W.1 and the brother of the deceased were telling her that they will be taking her for treatment the next day, since there was no bus facility that night. Then, they stayed over there. On the next day morning at about 6.00 a.m., P.W.1 and the brother of the deceased heard the distressed cries of the deceased. They went into the house of the deceased and saw the accused/appellant pressing her chest with his leg and strangling her with a dhothi, M.O.1. When P.W.1 and the brother of the deceased intervened, the accused/appellant fled away from the place. P.W.1 and the brother of the deceased went near the place and saw the dead body of the deceased.

iii. Thereafter, P.W.1 went to the Office of P.W.2, the Village Administrative officer, and gave a report under Ex.P-1. P.W.2 also prepared a special report under Ex.P-2. Both were handed over to P.W.10, Sub Inspector of Police, Thani Padi Police Station, who was on duty at that time, based on which, a case in Crime No.48 of 1996 was registered against the accused/appellant. Ex.P-9 is the copy of the printed first information report. The express reports were sent to higher officials and to Court.

iv. P.W.11, Inspector of Police, took up investigation in the case and at 2.00 p.m. on the same day, proceeded to the scene of occurrence, made an inspection in the

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presence of two witnesses and prepared an observation mahazar under Ex.P-3 and drew a rough sketch under Ex.P-10 mahazar. The dead body of the deceased and the scene of occurrence were photographed. M.O.2 series are the photographs. The investigating officer conducted inquest on the dead body in the presence of Panchayatdars and witnesses and prepared the inquest report under Ex.P-17 mahazar. Following the same, he issued a requisition to the doctor for conducting autopsy.

v. On receipt of the requisition along with the dead body, P.W.8, the Medical Officer attached to Government Hospital, Thani Padi, conducted autopsy on the dead body of Sengamalam and has given his certificate under Ex.P-9, wherein he has opined that death was due to asphyxia and death would have occurred about 24 to 28 hours prior to autopsy.

vi. Pending investigation, the investigating officer arrested the accused/appellant near Thani Padi – Harur Main Road on 28.2.1996. He volunteered to give a confessional statement, the admissible portion of which is marked as Ex.P-14 and pursuant to the same, the accused/appellant produced M.O.1, dhothi, which was recovered under Ex.P-5 mahazar. The accused was sent to Court for remand. The material objects were subjected to chemical analysis and the reports were received by the Committal Court.

vii. Further investigation was taken up by P.W.12, the Inspector of Police, Thandarampattu Police Station, who after examining the doctor and recording his statement, filed the final report against the appellant on 15.1.1997.

3. The case was committed to the Court of Sessions. In order to substantiate the charges levelled against the accused/appellant, the prosecution has marched 12 witnesses and relied on 12 exhibits and two material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the witnesses and he flatly denied them as false. No defence witness was examined. The trial Court, on hearing the arguments advanced on both sides and on consideration of the available materials, found the accused guilty as per the charges and awarded life imprisonment, which is the subject matter of challenge in this appeal.

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4. The learned counsel, Mr.R.Karthikeyan, advancing his arguments on behalf of the appellant, inter alia, made two prime submissions. Firstly, he would submit that it is highly doubtful whether Ex.P-1 report has come into existence as put forth by the prosecution. According to the prosecution case, P.W.1 immediately after the occurrence went to a nearby village, Kalnattur, where P.W.2, the Village Administrative Officer was residing and he gave a statement under Ex.P-1, and the same was also recorded by the Village Administrative Officer. But in his evidence, P.W.1 has categorically stated that the report was given at Puliyampatti, on the Village Administrative Officer coming over to the said place and thus, Ex.P-1, the basis of the case, has not come into existence, as put forth by the prosecution.

5. Secondly, the learned counsel would submit that in the instant case, the medical evidence has thoroughly belied the case of the prosecution. According to the post-mortem doctor and the certificate produced by him under Ex.P-8, there was fracture of the hyoid bone, which was post-mortem in nature and hence, death could not have taken place in the manner put forth by the prosecution and thus, the medical evidence did not corroborate the ocular testimony, but on the contrary, it has belied the case of the prosecution. The learned counsel would further submit that P.W.1 could not have been an eye witness to the occurrence. Under such circumstances, the learned counsel would submit that, the lower Court, without considering the above in the proper perspective, have found the accused guilty and hence, the accused is entitled for acquittal in the hands of the Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. It is not in controversy that the wife of the accused/appellant died due to asphyxia and pursuant to the inquest conducted by the investigating officer, the body was subjected to post-mortem by P.W.8, who gave the final opinion that the deceased died due to asphyxia and hence, without any difficulty, it could be recorded so.

8. In order to substantiate the case of the prosecution that it was the accused/appellant, who strangled the deceased and caused asphyxia, due to which, the deceased died, examined P.W.1 as eye witness to the occurrence. From the evidence of P.W.1, it would be quite clear that he came to the village of the deceased on coming to know about her illness and he stayed over that night in her house along with one Kuppan and the deceased was also informed that he would take her for treatment on the next day. On the next day morning at about 6.00 p.m., P.W.1 along with the said Kuppan heard the distressed cries of the deceased. They immediately went to the house of the deceased and found the accused/appellant pressing the

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chest of the deceased with his leg and has strangled her with M.O.1, dhothi. In the instant case, it is pertinent to point out that she was suffering from paralytic attack, which is quite evident from the materials available. Apart from that, in the instant case, the doctor has also given opinion that she died on account of asphyxia and according to P.W.1, the accused was pressing her chest with his leg and has strangled her with a dhothi. Under such circumstances, much pressure was not required to cause asphyxia.

9. The above circumstances would indicate that the deceased was a paralytic patient and apart from that, the accused was also pressing her chest with his leg at the time of occurrence and committed the act of strangulation. From the evidence of P.W.1, it would be quite clear that he went to the house of the deceased and stayed over there on that night and on the next day morning, he has seen the occurrence. While the witness come forward to say so, his presence was not denied, either on the previous day or on the date of occurrence, by anyone or at least by one suggestion in the entire evidence and thus, the lower Court has pointed out that the evidence of P.W.1 is cogent, natural and acceptable.

10. The next contention of the learned counsel appearing for the appellant is that there is a doubt whether Ex.P-1 could have come into existence as put forth by the prosecution. It is pertinent to point out that Ex.P-1 was a report given by P.W.1, which was recorded by P.W.2, the Village Administrative Officer, at his Office and he has also prepared a special report and sent both the reports to the police station, where, on the basis of the said reports, a case came to be registered against the accused/appellant and thereafter, law was set in motion. Under such circumstances, both the contentions raised by the learned counsel for the appellant do not merit acceptable by the Court.

11. In the instant case, the strong circumstance against the accused/appellant, in the opinion of the Court, is that at the time of occurrence, there were only two persons in the house of the appellant, viz., the accused and the deceased. The occurrence also took place in the house of the appellant. It is not the case of the appellant that he was absent during the relevant date or the period. He was all along living with the deceased. Hence, duty is cast upon him to show as to how his wife died. On the contrary, the prosecution has brought forth sufficient evidence to accept the case that it was the accused/appellant, who strangled the deceased and caused asphyxia, due to which, the deceased died. Under such circumstances, the act of the accused/appellant would fall within the ambit of murder and thus, the lower Court was perfectly correct in convicting the accused as per the charge and awarded life imprisonment, which, in the opinion of the Court, need not require interference either in the conviction or in the sentence.

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12. In the result, the appeal fails and it is, accordingly, dismissed. It is reported that the accused/appellant is on bail. The learned Sessions Judge shall take steps to commit the accused/appellant to prison to serve the remaining period of sentence.

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, Thiruvannamalai.
2.The Judicial Magistrate, Chingam.
3.-do- through the Chief Judicial Magistrate, Thiruvannamalai.
4.The Inspector of Police, Thandarampattu Police Station, Thani Padi P.S., Thiruvannamalai.
5.The Superintendent, Central Prison,Vellore.
6.The District Collector, Thiruvannamalai.
7.The Director General of Police, Madras.
8.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.V.Ayyadurai, Advocate SR No.33432

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SR/12.8.2005

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